

~~SECRET~~THE WHITE HOUSE
WASHINGTON

March 13, 1980

*2615 - Talk
to Stan - Give me
expeditious advice
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MEMORANDUM FOR:

THE PRESIDENT

FROM:

THOMAS L. FARMER *TLF*
Chairman, Intelligence Oversight
Board

SUBJECT:

Senior Officials' Reporting Obligation Under
Executive Order 12036

A situation has arisen which, if not resolved, could impair the ability of the Intelligence Oversight Board to serve you in accordance with your personal instructions and the terms of Executive Order 12036.

The Executive Order requires senior intelligence agency officials to report to the Intelligence Oversight Board any intelligence activities of their agencies which raise questions of legality or propriety. Yet, in a recent report to the Board, the Director of Central Intelligence informed the Intelligence Oversight Board;

"I do not interpret the Order as requiring that I report to the Board matters that I am persuaded have been brought to the personal attention of the President and that the President has manifested a desire not to disseminate any further. Consequently, this report does not apply to such matters."

In a subsequent meeting with the Board, Admiral Turner confirmed that, on the basis of this interpretation, he did not report two activities which raise questions of legality or propriety. According to Admiral Turner, you approved one of these activities about two years ago at a meeting attended by the Vice President, your National Security Adviser, and the DCI, and instructed that knowledge of the activity be limited to those officials. Admiral Turner stated that there was no reference to the IOB at this meeting but he assumed your instruction precluded reporting the matter to the Board.

However understandable Admiral Turner's assumption might have been, the rationale for his decision not to report this activity had previously been rejected by you in connection with an FBI

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operation. Early in your Administration then FBI-Director Kelley notified the Board that he was not reporting an activity raising questions of legality and propriety for identical reasons: because you had approved the activity and limited its dissemination to the Attorney General and your National Security Adviser. Nevertheless, you advised the Board that neither of these facts exempted the activity from the reporting requirement and directed that the Board be briefed.

On two occasions you explained to the Board in connection with this FBI activity that you wanted its advice on the serious questions of legality or propriety raised by intelligence activities without regard to prior approval by you.

The Board believes that the considerations underlying your prior decision on the reporting obligation, of which Admiral Turner is presumably unaware, apply equally to the situation he describes. Reporting to the Board does not delay the implementation of intelligence activities, since the IOB is not a part of the approval process, but it ensures that you are provided with a timely opportunity for reassessment in light of questions which may not have been presented by the operational elements of the Intelligence Community. Not reporting such activities, on the other hand, denies you the staffing of the only White House element with oversight but not operational responsibilities for intelligence activities.

The Board's informed yet detached perspective is especially valuable when applied to very closely held activities, since these are the very activities most likely to raise questions of legality and propriety.

Recommendation

We recommend that the Intelligence Oversight Board be briefed about any intelligence activities raising questions of legality or propriety which Admiral Turner has not already reported to the Board.

Approve _____ Disapprove _____

In addition, the Board requests a meeting with you (a) to discuss the incomplete implementation of Executive Order 12036; and (b) to seek your views on the role of Executive Branch oversight as unwarranted restraints on intelligence activities are removed to permit greater operational flexibility.

Significant progress has been made toward implementation of your Order in the two years since you signed it, but important procedures

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required under the Order have yet to be promulgated. In the absence of new procedures, some intelligence activities are still governed by procedures implemented under President Ford's Executive Order 11905, which was superseded by your Executive Order 12036. This condition has resulted in continuing uncertainty and confusion within the Intelligence Community as well as the undue impairment of operational effectiveness. The continuing failure to approve all procedures under your Order could also adversely affect the Administration's efforts to persuade the Congress to enact acceptable intelligence charters legislation.

With regard to the Executive Branch system of oversight, there are indications that some (though not all) agencies within the Intelligence Community interpret your desire to remove unwarranted restraints on intelligence activities, and your opposition to unqualified Congressional scrutiny of these activities, as evidence of decreased Presidential support for intelligence oversight within the Executive Branch.

The relaxation of substantive restrictions on intelligence activities, however, in no way diminishes the need for effective Executive Branch oversight. As operational restraints are removed, intelligence agents are necessarily required to exercise a wider range of discretion in implementing greater numbers of intelligence operations, thereby increasing the possibility of questionable conduct. Oversight by a staff element without operational responsibility is essential if you are to be kept advised fully of the questions of legality and propriety that such activities raise. Effective oversight within the Executive Branch is also a strong argument for resisting detailed Congressional oversight of intelligence operations.

The Board believes it is important to discuss with you its role in light of the changing perceptions of Executive Branch oversight which have occurred during the 18 months since we last met with you.

Approve _____ Disapprove _____